

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
LUBBOCK DIVISION

UNITED STATES OF AMERICA,	)	NO. 5:06-CR-067-C
PLAINTIFF,	)	
	)	
VS.	)	LUBBOCK, TEXAS
	)	
JOSHUA HEATH ZUNIGA,	)	
DEFENDANT.	)	FEBRUARY 22, 2007

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**RE-ARRAIGNMENT HEARING**

**BEFORE THE HONORABLE SAM R. CUMMINGS,**

**UNITED STATES DISTRICT JUDGE**

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OFFICIAL COURT REPORTER: MECHELLE DANIEL, 1205 TEXAS AVENUE,  
LUBBOCK, TEXAS 79401, (806) 744-7667.

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY; TRANSCRIPT  
PRODUCED BY COMPUTER-AIDED TRANSCRIPTION.

A P P E A R A N C E S

**FOR THE GOVERNMENT:**

UNITED STATES ATTORNEY'S OFFICE  
1205 TEXAS AVENUE, SUITE 700  
LUBBOCK, TEXAS 79401  
BY: STEVEN M. SUCSY

**FOR THE DEFENDANT:**

MARK EIGLARSH  
ATTORNEY AT LAW  
404 WASHINGTON AVENUE, #750  
MIAMI BEACH, FLORIDA 33139

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2 THE COURT: The next case called for re-arraignment  
3 is Cause Number CR5-06-067, United States of America vs. Joshua  
4 Zuniga.

5 MR. SUCSY: The United States is ready.

6 MR. EIGLARSH: Good afternoon, Your Honor. Mark  
7 Eiglarsh on behalf of Mr. Zuniga, who is present.

8 THE COURT: All right. We are re-arraigning on  
9 Count 8; is that correct?

10 MR. SUCSY: Yes, Your Honor.

11 THE COURT: I'd ask the government's attorney to read  
12 for the record Count 8 of the indictment.

13 (THE INDICTMENT IS READ IN OPEN COURT BY MR. SUCSY)

14 THE COURT: All right, Mr. Zuniga. Do you  
15 understand, sir, that in Count 8 of this indictment, you have  
16 been charged with possession of child pornography?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: All right, sir. How do you plead to this  
19 count? Guilty or not guilty?

20 THE DEFENDANT: Guilty.

21 THE COURT: If you'll raise your right hand, I need  
22 to have you placed under oath.

23 (THE DEFENDANT IS SWORN)

24 THE COURT: Now that you have been placed under oath,  
25 sir, do you understand that you need to answer all of my

1 questions truthfully?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: I've been handed a document captioned  
4 Plea Agreement. It's showing to be signed by Mr. Zuniga, as  
5 well as by his attorney, Mark Eiglarsh.

6 It's also signed by Steve Sucsy, Assistant United  
7 States Attorney.

8 Mr. Zuniga, have you read over and have you signed  
9 this plea agreement?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Do you understand the terms and  
12 conditions of the agreement?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Do you agree with those terms and  
15 conditions?

16 THE DEFENDANT: I do.

17 THE COURT: Do you understand that under paragraph 11  
18 of the agreement, you are, in effect, giving up your right to  
19 appeal or otherwise challenge your conviction or sentence  
20 imposed in this case, except for the very limited reasons as  
21 set forth in that paragraph. Do you understand this?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Now, Mr. Zuniga, are you pleading guilty  
24 to Count 8 because you are guilty?

25 THE DEFENDANT: Yes.

1 THE COURT: Is your guilty plea the result of any  
2 force or threats on the part of the government?

3 THE DEFENDANT: No.

4 THE COURT: Have you, in the past, been treated for  
5 any type of mental illness or drug addiction?

6 THE DEFENDANT: No.

7 THE COURT: Are you taking anything in the way of  
8 medication this afternoon?

9 THE DEFENDANT: No.

10 THE COURT: Do you understand, sir, if I accept this  
11 guilty plea, it could have an adverse impact upon certain of  
12 your civil rights, such as the right to vote, the right to hold  
13 public office, the right to serve on juries, things of that  
14 nature?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you understand, sir, that under the  
17 statute, the maximum penalty the Court could impose is as  
18 follows:

19 First, a term of imprisonment for a period of not  
20 more than 10 years;

21 Next, a fine not to exceed \$250,000;

22 Next, a term of supervised release of up to life,  
23 with the understanding that if there is a violation of any of  
24 the conditions of supervision, the defendant could be  
25 imprisoned and be subject to additional terms of supervised

1 release;

2 Next, a mandatory special assessment of \$100 would be  
3 imposed;

4 And finally, the costs of incarceration and  
5 supervision would be imposed.

6 Do you understand, sir, that's the maximum penalty  
7 that could be imposed under the statute?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you also understand, sir, this is a  
10 Sentencing Guidelines case, which means I will be looking to  
11 those guidelines as a factor to consider when arriving at the  
12 sentence. But do you also understand, sir, the guidelines are  
13 advisory only. If the facts so warrant, the Court could impose  
14 up to the statutory maximum sentence in the case. Do you  
15 understand this?

16 THE DEFENDANT: Yes.

17 THE COURT: Now, Mr. Zuniga, do you understand, sir,  
18 you could plead not guilty to this indictment, thereby  
19 requiring the government to take this case to a trial before a  
20 jury of 12 persons. That jury would have to be in complete  
21 agreement before they could return a guilty verdict against  
22 you. The burden of proof is upon the government to prove its  
23 case beyond a reasonable doubt, which is a heavy burden. You  
24 would have the right to the assistance of your lawyer at all  
25 stages of proceedings; your lawyer would have the right to

1 cross-examine the government witnesses; you could bring in  
2 witnesses on your behalf; you could not be required to testify  
3 at time of trial. Do you understand these rights?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand, sir, that by pleading  
6 guilty to Count 8, you are giving up your right to a jury  
7 trial?

8 THE DEFENDANT: Yes.

9 THE COURT: I've been handed a document captioned  
10 Factual Resume. It's showing to be signed by Mr. Zuniga, as  
11 well as by his attorney.

12 Mr. Zuniga, have you read over this factual resume  
13 and does it accurately recite the facts made the basis for your  
14 plea of guilty this afternoon?

15 THE DEFENDANT: Yes.

16 THE COURT: After reviewing your rights, the nature  
17 of the charges presented, and the potential penalties, do you  
18 still wish to plead guilty to Count 8 of this indictment?

19 THE DEFENDANT: Yes.

20 THE COURT: It's the finding of the Court in the case  
21 United States of America vs. Joshua Heath Zuniga that the  
22 defendant is fully competent and capable of entering an  
23 informed plea and that his plea of guilty is a knowing and  
24 voluntary plea supported by an independent basis in fact  
25 containing each of the essential elements of the offense

1 charged in Count 8.

2 The defendant's plea is therefore accepted, and the  
3 defendant is now adjudged guilty of the offense charged in  
4 Count 8 of the indictment.

5 I'm going to order a presentence investigation.  
6 Mr. Zuniga, do you understand, sir, that you have the right to  
7 have your lawyer present at the time that you're interviewed by  
8 the probation officer?

9 THE DEFENDANT: Yes.

10 THE COURT: I've also been advised that you--some of  
11 your conditions for pretrial release is that you begin  
12 attending a mental health counseling session. You need to  
13 begin attending those sessions next week.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Make whatever arrangements, Counsel, that  
16 you can to get him into those sessions, because if they don't  
17 get started, then I may have to do something about his bond.

18 MR. EIGLARSH: I understand.

19 THE COURT: All right. You may stand aside.

20 MR. EIGLARSH: Have a good afternoon. Nice to see  
21 you, Judge.

22 (END OF HEARING)

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1 I certify that the foregoing is a correct transcript from  
2 the record of proceedings in the above-entitled matter. I  
3 further certify that the transcript fees and format comply with  
4 those prescribed by the Court and the Judicial Conference of  
5 the United States.

6  
7 s/ Mechelle Daniel **DATE** MAY 19, 2011

8 Mechelle Daniel  
9 Official Court Reporter  
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